

## **1210 LABOR COMPLIANCE FOR FEDERAL AID PROJECTS**

### **1210-1 General**

ADOT is responsible for enforcing the required contract provisions for Federal Aid Construction Contracts. The responsibility for the inspection and enforcement of labor standards rests mainly with the Resident Engineer. Having continuous contact with the Contractor, the Resident Engineer is able to determine, through observation and inquiry, if there is compliance with the labor standards. It is to his advantage to resolve any questions that may arise as promptly as possible. The Resident Engineer is expected to be familiar with and able to answer inquiries regarding the Federal Aid contract provisions.

Questions regarding Labor Compliance regulations should be directed to:

ARIZONA DEPARTMENT OF TRANSPORTATION  
FIELD REPORTS SECTION  
206 South 17th Avenue, Room 167A, Mail Drop 133A  
Phoenix, AZ 85007  
Phone (602) 712-7301; FAX (602) 712-3067

### **1210-2 Federal Labor Acts**

#### **Davis-Bacon Act of 1931 and Davis-Bacon Related Acts (DBRA)**

All laborers and mechanics working on the construction project are required to be paid unconditionally, and not less than once a week, the wage rates contained in the wage decision incorporated into the contract.

The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, trainees, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual.

Laborers and mechanics must be properly classified and paid according to work actually performed. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein – provided the employer's payroll records accurately set forth the time spent in each classification.

The wage determination shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by all employees.

#### **The Contract Work Hours and Safety Standards Act (CWHSSA) of 1969**

This Act contains weekly overtime pay requirements and applies to contracts which may require or involve the employment of laborers or mechanics, including watchmen and guards. This Act applies to federally-funded construction projects in excess of \$2,000 and also extends to federally-assisted contracts subject to Davis-Bacon and Related Acts (DBRA) wage standards to which the Federal Government is not a direct party.

CWHSSA requires that laborers and mechanics employed on covered contracts be paid not less than one and one-half times their basic hourly rate of pay for hours worked in excess of forty hours in a work week. It also provides for liquidated damages in the sum of \$10 for each calendar day (with respect to each employee

employed in violation) on which an employee was required or permitted to work overtime hours without the payment of overtime wages required by CWHSSA.

The Act also provides health and safety standards on covered construction work which are administered by OSHA.

### **The Copeland “Anti-Kickback” Act of 1934**

The “Anti-Kickback” section of the Copeland Act makes it punishable by a fine up to \$10,000 or by imprisonment up to 5 years, or both, to induce any person working on a federally-funded or assisted construction project to “give up any part of the compensation to which he is entitled under his contract of employment.”

Regulation 5.5(a)(3)(ii) requires, as a contract stipulation, that the Contractor submit weekly to the contracting agency a copy of all payrolls, along with a “Weekly Statement of Compliance.”

The willful falsification of a payroll report or “Weekly Statement of Compliance” may subject the employer to civil or criminal prosecution and may also be a cause for debarment.

### **1210-3 Payroll Procedures**

The Resident Engineer and his/her field office staff are responsible for the complete checking of project payrolls before they are forwarded to Field Reports. Please insure all information required is shown on each payroll.

Repeated violation of Davis-Bacon requirements by the Contractor or Subcontractors is considered a non-performance issue. Part or all of the monthly progress payments will be withheld until the Contractor can demonstrate compliance. See Standard Specification 109.06 and Contract Special Provisions. Written notification of discrepancies, along with an expected due date from the Contractor, is required. For each payroll the contractor fails to submit by that due date, the Department will retain \$2,500.00 from the progress payment for the current month. (See example Exhibit 1210-3A).

The following check list is recommended as a guide in checking for Contractor's compliance with Davis-Bacon regulations. (*Italicized items are not the responsibility of the Contractor*)

**ADOT Valley West Field Office**

5961 W. Myrtle  
Glendale, AZ 85301  
(623) 939-4753 Office  
(480) 755-1049 Fax

**NH-999-A(024)A / H648201C  
CERTIFIED PAYROLL UPDATE**

**Date:** June 10, 2005

**To:** Bob Tasso, Meadow Valley Contractors, Inc.

**From:** Kim Haas, Office Manager / Valley West Field Office

NAME	P/R NO.	REASON	DUE BY
MVCI		Last payroll received was #20, W/E 05/21/05. Submit payrolls through the month of May.	06/24/05
Bob's Barricades, Inc.		Last payroll received was #17, W/E 05/08/05.	
Cactus Transport, Inc.		Last payroll received was #10, W/E 05/21/05.	
C & S Sweeping Services, Inc.		Last payroll received was #11, W/E 05/08/05.	
Ecology Control Industries		No payrolls received.	
Five G, Inc.		Last payroll received was #12, W/E 05/19/05.	
Gillespie Trucking		Last payroll Received was #5, W/E 03/27/05. Submit a Final payroll.	
Great American Sweeping		Last payroll received was 14, Final.	
Penhall Company	19	On PR# 19, Alfredo Pulido has an incorrect classification. Last payroll received was #19, W/E 05/20/05.	06/24/05
Pettera Asphalt Profiling Inc.		Last payroll received was #6, Final.	
R. L. Whites Water Hauling		Last payroll received was #12, W/E 05/15/05.	
Stinger Welding, Inc.		Last payroll received was #9, W/E 05/07/05.	
United Rentals (V29)		Last payroll received was #16, W/E 05/07/05.	

**THANK YOU!**

Cc: Bill Hurguy  
Debra Bowie, Field Reports

(EXHIBIT 1210-3A)

ARIZONA DEPARTMENT OF TRANSPORTATION

- 1 -

**START & COMPLETION NOTIFICATIONS**

1. *Has a start memo for the prime contractor been submitted to Field Reports? If so, does the Contractor's payroll cover the starting date? It is ADOT's policy that the start memo date should be taken from the Inspector's diary.*
2. *When Subcontractor payrolls are submitted verify the subcontract was approved prior to start of work. Payrolls received from unauthorized Subcontractors should be brought to the attention of the Resident Engineer and a subcontract must be requested. A letter from the Resident Engineer shall be submitted to Field Reports explaining why this Subcontractor was working on the project without an approved subcontract.*
3. *Has a completion memo for the prime contractor been submitted to Field Reports?*

**WEEKLY STATEMENT OF COMPLIANCE (WSC)**

4. Does each payroll have a Weekly Statement of Compliance with project information (TRACS and Project number) filled in? If no work was performed, submit a WSC stating "NO WORK PERFORMED". Several no work weeks can be combined on one WSC (example: payroll period June 07, 2000 – July 25, 2000 payroll numbers 6-12).
5. Is the WSC signed by a representative of the Contractor?
6. Is the appropriate fringe benefit notation checked?
  - If box (A) is marked verify if a current plan is on file in Field Reports.
  - If box (B) is marked check if benefits are being paid in cash.
  - If the Contractor is paying part of the fringes in cash and the remainder to a plan both boxes should be marked or an explanation in the Exceptions (C) box.

**CERTIFIED PAYROLLS**

7. Two copies of payrolls are required to be submitted to the ADOT Field Office by the Contractor within seven days after the regular payment date of the payroll period. After project office verification, one copy will be sent to Field Reports.
8. Is the Contractor/Subcontractor name, address, project location, project number and TRACS number shown on each payroll?
9. Does the seven day work week shown follow in chronological order and does the payroll number follow in numerical sequence with the Weekly Statement of Compliance?
10. Does each payroll have the full name, address and social security number for each employee?
11. Is each employee's classification and group number (if applicable) listed? The classification should contain the same title as in the Wage Decision for that particular project.
12. If the employee is working in more than one classification are both classifications and both wage rates shown?

13. Are the daily and weekly hours worked shown separately for each classification?
14. Is the basic hourly rate of pay as much or more than the rate for each classification shown in the Wage Decision?
15. Does each employee entry show total hours worked for this project and gross amount earned for all hours worked in the work week?
16. Calculate hours worked multiplied by rate of pay to confirm gross amount; then minus deductions to determine net weekly wages paid are accurate. A payroll calculation spreadsheet is available from Field Reports via e-mail.
17. Is the correct overtime rate shown? All hours over 40 per week are considered overtime and should be paid at time and one half (basic wage rate x 1.5 + cash fringe rate = OT amount).
18. Are the deductions clearly labeled?
19. Cash fringe benefits should be clearly labeled if they are not included in the basic rate of pay.
20. If there is an apprentice or trainee shown on the payroll, has the appropriate apprentice certificate or trainee enrollment form and certificate of registration been submitted for each level worked? Is the TRACS Project number on each certificate?
21. If the project has multiple wage decisions have the contractor write the 'General Decision number' being used on each payroll.
22. *Supplemental, amended, revised or corrected payrolls and WSC must be accompanied by the original payroll submittal and clearly marked as such.*
23. Has the last payroll been marked "FINAL" when the Contractor/Subcontractor completed work?
24. *After the ADOT Field Office has thoroughly checked each payroll they will date and initial in red ink.*

### **Corrections To Payrolls**

1. In no instance shall the original payroll be returned to the Contractor once it has been submitted to ADOT.
2. All errors should be referred to the Contractor/Subcontractor by the field office for corrections.
3. Supplemental payrolls, corrected payrolls, or spreadsheets are required where underpayments have been made.
4. Corrected payrolls should be submitted for incorrect classifications.

### **Recording Payrolls**

A log sheet should be prepared for the Contractor at the time the contract is awarded and for each Subcontractor at the time they are authorized.

Record each payroll on the log sheet as it is received. Entries should be made upon receipt of the payrolls.

Should a payroll contain an error, do not forward to Field Reports, notify the Contractor and request corrected payrolls. When payrolls are correct, forward a copy to Field Reports.

A payroll log spreadsheet that calculates the beginning and ending work weeks is available from Field Reports.

### **Submitting Payrolls**

Payrolls should be submitted to Field Reports on an ongoing basis throughout the duration of the project.

All certified payrolls are to be submitted to the Field Reports office after they are verified/checked. This includes payrolls for force account and change order work on Federal projects. If no subcontract was required, the force account number should be on the payroll.

### **1210-4 Apprentice And Trainee Certificates**

An Apprentice/Trainee certificate must be submitted to Field Reports for each apprentice/trainee on the project. A certificate must be submitted for every level or percentage which the apprentice/trainee is being paid to coincide with the payrolls.

Each certificate must show the project number, training level, rate of pay per hour, and the expiration date.

Some Apprentice/Trainee programs are approved by the ADOT Civil Rights Office.

## PAYROLL EXAMPLES

- Payrolls must be numbered sequentially.

**Write the word "FINAL" after the number on your last payroll.**

☐ Check correct box —

Project Description

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS		OMB No.: 1111-0001 Expires: 08-31-94														
PAYROLL NO.		FOR WEEK ENDING <u>April 8, 1993</u>		PROJECT AND LOCATION <u>Landing Light Replacement, PSH-A</u>														
<u>14 (FINAL)</u>		PROJECT OR CONTRACT NO. <u>IM40-2(100)</u>																
(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF EXEMPTIONS	(3) WORK CLASSIFICATION AND GROUP NO.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) FRINGE HOURLY RATE	(8) GROSS AMOUNT EARNED	(9) DEDUCTIONS				(10) NET WAGES PAID FOR WEEK
			S	M	T	W	T	F	S					FICA	Withholding Tax	other	Total Deductions	
			2	3	4	5	6	7	8									
			HOURS WORKED EACH DAY															
			(OT OR ST.)															

- Addresses w/zip's are required.
- Social Security Number is required.
- Give all deductions, actual gross and net amounts as shown on paycheck.

**EXAMPLE: Classification and Group for the Owner of the Company**

(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) FRINGE HOURLY RATE	(8) GROSS AMOUNT EARNED		(9) DEDUCTIONS				(10) NET WAGES PAID FOR WEEK
			S	M	T	W	T	F	S										
			2	3	4	5	6	7	8				This Proj.	All Proj.	FICA	Withholding Tax	other	Total Deductions	
HOURS WORKED EACH DAY																			
Jim B. Spary 65432 East Copper Blvd. Phoenix, AZ 85000 555-55-5555		Power Equipment Operator 2																	
	OT OR ST.																		
			s	0	8	8	8	8	0	40	10.00	3.00	520.00	520.00					520.00

■ Fill in classification exactly as it appears on the wage determination, together w/group indications.

**EXAMPLE: Truck Owner/Operator**

(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) FRINGE HOURLY RATE	(8) GROSS AMOUNT EARNED		(9) DEDUCTIONS				(10) NET WAGES PAID FOR WEEK
			S	M	T	W	T	F	S										
			2	3	4	5	6	7	8				This Proj.	All Proj.	FICA	Withholding Tax	other	Total Deductions	
HOURS WORKED EACH DAY																			
Jim B. Spary 65432 East Copper Blvd. Phoenix, AZ 85000 555-55-5555		Truck Owner-Operator																	
	OT OR ST.																		
			s																

(Verification attached to payroll)





**EXAMPLE: Overtime**

(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF HOURLY PAY	(7) FRINGE HOURLY RATE	(8) GROSS AMOUNT EARNED		(9) DEDUCTIONS				(10) NET WAGES PAID FOR WEEK							
			S	M	T	W	T	F	S																	
			HOURS WORKED EACH DAY																							
Jane Z. Doe 45678 West Light Lane Phoenix, AZ 85000 444-44-4444		Power Equipment Operator Group 1	0	0	1	2	1	0	0	0	4	9.00	3.00	468.00	408.00	FICA	50.00	Withholding Tax	10.00	State	5.00	other		Total Deductions	65.00	343.00
			0	0	8	8	8	8	8	0	40	3.00	3.00	468.00	408.00											

■ Record straight-time and overtime separately.

**EXAMPLE: Overtime Worked on This Project & Other Projects**

(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF HOURLY PAY	(7) FRINGE HOURLY RATE	(8) GROSS AMOUNT EARNED		(9) DEDUCTIONS				(10) NET WAGES PAID FOR WEEK						
			S	M	T	W	T	F	S																
			HOURS WORKED EACH DAY																						
Jane Z. Doe 45678 West Light Lane Phoenix, AZ 85000 444-44-4444		Power Equipment Operator Group 1	0	0	0	0	2	0	0	2	9.00														
			0	1	2	1	0	0	0	4	6.00	3.00													
			0	8	8	8	8	8	0	40	6.00														
			0	8	8	8	8	8	0	40	4.00	3.00	316.00	574.00	FICA	50.00	Withholding Tax	10.00	State	5.00	other		Total Deductions	65.00	509.00

Exhibit 1210-4-1D. Payroll Examples

**EXAMPLE: Cash Paid in Lieu of Fringes**

(1) NAME ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE  John N. Doe 89 East Conant Circle Phoenix, AZ 85000 603-58-8686	(2) NO OF EXEMPTIONS	(3) WORK CLASSIFICATION  Electrician	OT OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) FRINGE HOURLY RATE	(8) GROSS AMOUNT EARNED		(9) DEDUCTIONS					(10) NET WAGES PAID FOR WEEK
				S	M	T	W	T	F	S				This Proj.	All Proj.	FICA	Withholding Tax	State	other	Total Deductions	
				2	3	4	5	6	7	8			360.00	360.00	50.00	13.00	5.00		68.00	295.00	

Exhibit 1210-4-1E. Payroll Examples

**1210-5 Fringe Benefits**

It is necessary that at the time payrolls are submitted to each field office, the distribution of fringe benefits be reviewed. If the Contractors indicate on the Statement of Compliance that fringes are contributed to a plan and there is no current plan on file in ADOT Field Reports, request a copy of the complete plan including the "Explanation of Benefits". Submit it to Field Reports to review for Davis-Bacon compliance.

**1210-6 Specific Fringe Benefits**

The act lists all types of fringe benefits which Congress considers to be common in the construction industry as a whole. These may include the following:

1. Medical or hospital insurance
2. Pensions
3. Life insurance
4. Disability, sickness, and accident insurance
5. Vacation and holiday pay
6. Defrayment of costs of apprenticeship or other similar programs

There may be other bona fide fringe benefits, but only where the Contractor or Subcontractor is not required by federal, state or local law to provide such benefits. ADOT may request copies of employer deposits/payments to these plans for any/all weeks worked.

**1210-7 Overtime, Fringe Benefits and Zone Pay**

Fringe benefits are required to be paid for all hours worked, including overtime.

One and one-half times the basic rate, plus one times the fringe benefit rate will be paid for all time worked over 40 hours within any work week.

Example:

A Laborer's wage rate is -

Basic Rate	-	\$10.00 per hour
Fringe Benefit	-	\$ 3.00 per hour

The overtime rate will be –

$$1\frac{1}{2} \times \$10.00 + \$3.00 = \$18.00 \text{ per hour}$$

If the project Wage Determination indicates an additional amount for Zone Pay, that amount is added to the basic rate of pay.

**Power Equipment Oper Grp 3 Wage Rate = \$17.25 Fringes = \$3.53**  
**Zone 2 – add \$1.00 per hour**

**POWER EQUIPMENT OPERATOR 3 = WORKING IN ZONE 2**  
**FRINGE PAID TO AN APPROVED PLAN**

<b>Basic Wage Rate</b>	+	<b>Zone Pay</b>	=	<b><u>Straight</u> Time Rate of Pay</b>
\$17.25	+	\$1.00	=	\$18.25
<b>[Basic Wage Rate</b>	+	<b>Zone Pay]</b>	<b>x 1.5</b>	<b>= <u>Overtime</u> Rate of Pay</b>
[\$17.25	+	\$1.00]	x 1.5	= \$27.38

**POWER EQUIPMENT OPERATOR 3 = WORKING IN ZONE 2**  
**FRINGES PAID IN CASH**

<b>Basic Wage Rate</b>	+	<b>Zone Pay</b>	+	<b>Fringe Rate</b>	=	<b><u>Straight</u> Time Rate of Pay</b>
\$17.25	+	\$1.00	+	\$3.53	=	\$21.78
<b>[Basic Wage Rate</b>	+	<b>Zone Pay]</b>	<b>x 1.5</b>	<b>+ Fringe Rate</b>	=	<b><u>Overtime</u> Rate of Pay</b>
[\$17.25	+	\$1.00]	x 1.5	+ \$3.53	=	\$30.91

### 1210-8 Back Wage Payments

The procedures to follow when dealing with back wage checks owed to employees are:

1. Advise the Contractor that all checks must be made payable to: "Employee's name or **Unclaimed Property**" and must have the employee's current address, city and zip.
2. Submit all checks to Field Reports. Advise exactly what the violation was, how many employees were affected and the total gross amount due for the entire violation. A spreadsheet from the contractor is acceptable.
3. If the check was delivered to the employee by the Contractor, a copy of the endorsed canceled check (front and back) is required as proof of payment.

### 1210-9 Employee Interviews

Employee interviews are a requirement on Federal-aid projects (see blank forms at the end of chapter).

Each employee is subject to being interviewed on the job, during work hours. Since the Inspector is on the job site daily, employee interviews should be conducted on a regular basis. The goal is to have interviews on most employees by the time the project is complete. If the project is small with the same employees week after week, repetitive interviews are unnecessary. If an adequate number of interviews are not conducted, the Resident Engineer shall submit a letter of explanation to Field Reports.

The Inspector should verify work the employee is performing and what tools of the trade he/she is using. The Inspector should document when an employee refuses to be interviewed.

The field office should review all interviews and compare them with what is actually on the payroll, then sign, date and submit all interviews to Field Reports. These interviews are confidential and should never be shown to the Contractors.

The Resident Engineer should bring to the attention of the Field Reports Office the need for assistance whenever he/she has reason to believe that there are violations based on inconsistent or different information shown on the payrolls when compared to the employee interviews.

### **1210-10 Site of Work, Truck Drivers And Hauling**

#### **Site of Work (Department of Labor Regulations 29 CFR Part 5.2(j) Revised January 2001)**

- Davis Bacon and Related Acts (DBRA) applies only to workers on the site of the work.
  1. Limited to the physical place or places where the construction remains after work has been completed.
  2. Any other site where a significant portion of the building or work is constructed, provided such site is established specifically for the contract.
- Site of the work includes fabrication plants, mobile factories, batch plants, borrow pits, tool yards, headquarters, etc., provided they:
  1. Are located adjacent or virtually adjacent to the site of the work described above, and
  2. Are dedicated exclusively or nearly so to the performance of the contract or project.

**Truck Drivers Do** receive Davis Bacon wages in the following circumstances:

1. Drivers of a contractor or subcontractor for the time spent working on the site of the work.
2. Drivers of a contractor or subcontractor for the time spent loading or unloading on the site, if such time is more than de minimis.
3. Drivers transporting materials and supplies between a facility that is part of the site of the work and the actual construction site.
4. Drivers transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain.

**Truck Drivers Do Not** receive Davis Bacon wages in the following instances:

1. Material delivery truck drivers while off the site of the work.
2. Drivers of a contractor or subcontractor traveling between a commercial facility and a Davis-Bacon job when they are off the site of the work.
3. Drivers whose time on the site of the work is de minimis, such as only a few minutes at a time to merely pick up or drop off materials or supplies.

In addition, DOL has an enforcement position with respect to bona fide owner-operators of trucks who are independent contractors [an owner-operator is a person who owns and drives a truck]. Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation "owner-operator". This position does not apply to owners of other equipment such as bulldozers, cranes, etc.

### **1210-11 Documentation Required For Proof Of Owner-Operator**

Before submitting Certified Payrolls to Field Reports you should obtain proof of ownership (current vehicle registration) for each employee listed as an owner-operator and also a copy of a valid Commercial Driver License. Attach this proof to the first payroll in which they are listed as owner-operator.

Employees hired by owner-operators are subject to Davis-Bacon wages as determined in the General Wage Decision. When an owner-operator is sharing his truck with another operator, that operator must be paid Davis-Bacon Wages.